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April 27, 2000

Via Hand Delivery

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

*Re: Ex Parte Presentation in CC Docket No. 96-98, Fourth Further Notice of
Proposed Rulemaking*

Dear Ms. Salas:

The Competitive Telecommunications Association ("CompTel") hereby submits the attached proposal describing situations under which carriers may convert circuits originally ordered as special access service to their underlying loop/transport UNE combination. Although CompTel does not believe that the Commission can legally restrict carriers from using UNE combinations to provide any service -- nor should the Commission, as a matter of policy, attempt to protect inflated ILEC prices from lawful competition -- the attached proposal is intended to give effect to a transitional requirement that only special access circuits used to provide a "significant" degree of local exchange service may be converted to a UNE combination.

The CompTel proposal is intended to rely, to the maximum extent practical, on easily verifiable measures for compliance. In no instance would an ILEC require access to individual customer records or usage data -- data that are both highly proprietary, vary by month, and are unnecessary to the limited purpose of the proposed limitation on the entrants' conversion rights -- to implement a temporary restriction. For example, one key component of CompTel's proposal is that any carrier that already reports that, at least, 70% of its revenues are local revenues to the Universal Service Fund Administrator would be permitted to convert all special access services to UNE combinations because such carriers have already demonstrated through such reports that their services are predominately local. No individual circuit-level demonstration would be needed. Carriers that report a lower percentage of local revenues would still be able to convert special access circuits, however, subject only to the requirement that the end-user's service is designed/priced to support a significant level of the customer's local traffic or customer

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certification.¹ Again, no detailed circuit-level usage data would be needed.

Of course, any limitation on the entrant's right to convert special access circuits should be structured to not impede the market's natural evolution to all-distance products, new technologies and advanced services.² Consequently, any limitation should be simple, easy to administer, and accommodate new technologies and network arrangements. CompTel believes that its proposal satisfies these objectives. The proposal would preserve ILEC revenues derived from so-called "pure" special access services, but at the same time, not restrict the use of an UNE combination that is also being used to provide local exchange service.

Given that one of the primary goals of the Act was to encourage and facilitate cost-based competition in all communications markets, however, CompTel believes that the interexchange market should be treated no differently from the local exchange market when the ILEC is both a critical input supplier and a retail competitor. Therefore, in any market where the ILEC (or its affiliate) also provides interexchange services, the loop/transport combination must be made available at cost-based rates regardless of whether the requesting carrier is providing any local exchange service to the end-user. Otherwise, the ILEC could use part of the above-cost "rent" portion of its special access prices to ensure that the end user not purchase *any* local exchange service from the competing carrier in order to preserve some portion of its monopoly special access rents.

Thus, the attached proposal best balances the Commission's concern that cost based UNE combinations be used to facilitate competition, but continues to preserve existing special access revenues where the ILEC cannot recoup the lost revenues through competition in the marketplace. More significantly, this proposal would avoid the need for the Commission to

¹ In CompTel's view, if the carrier has designed its service and network to support the customer's local traffic it has satisfied the Commission's apparent objective to permit the conversion of only those special access circuits used in a competitive local environment. It is the customer's choice, however, to determine exactly how to handle its local traffic in any given month, including the decision to not make any local calls. There is simply no need for the Commission's policy to require detailed usage information in order to effect a limited restriction to prevent the conversion of traditional special access circuits that are used exclusively to provide interexchange voice communications.

² In no event should a limitation that restricts the entrant's right to convert special access circuits apply to an arrangement acquired initially as a UNE combination. Entrants should have access to unrestricted UNE combinations ordered in:

- (1) any state that has decided the RBOC has an obligation under contract or regulatory order to combine network elements, or
- (2) any MSA where the RBOC has removed local switching as an unbundled network element.



authorize anticompetitive audit schemes that the incumbent can use to impose regulatory costs on their competitors.

For these reasons, CompTel encourages the Commission to abandon existing proposals that advocate administratively cumbersome use restrictions that are plainly contrary to the intent of the Act.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan D. Lee".

Jonathan D. Lee
Vice President,
Regulatory Affairs

cc: Dorothy Attwood
Rebecca Beynon
Kyle Dixon
Jordan Goldstein
Sarah Whitesell
Larry Strickling
Robert Atkinson
Jake Jennings
Jodie Donovan-May

CompTel Proposal

The Commission has determined that only Special Access circuits that carry a “significant” level of local traffic should be eligible for conversion to UNE rates. In order to determine whether a Special Access circuit is eligible for conversion to UNEs, the following presumptions should apply. Each of these presumptions is designed so that they can be confirmed without resorting to the auditing of network configuration information or individual billing records.

- (1) Any Special Access arrangement ordered prior to the effective date of the *Local Competition Order*³ will be presumed to not carry a significant level of local traffic, unless;
 - (a) CLEC and/or end user certifies that any Special Access arrangement ordered prior to the effective date of the *Local Competition Order* has since been modified to carry local exchange traffic, and is presently being used for this purpose; in which case, the arrangement will be presumed to carry a significant level of local traffic.
- (2) For Special Access arrangements ordered after the effective date of the *Local Competition Order*, one of the following criteria must apply:
 - (a) Special Access arrangements ordered by carriers holding CLEC certificates and reporting TRS/USF revenues where at least 70% of their revenues are reported as local shall be presumed to carry a significant amount of local traffic;
 - (b) Special Access arrangements used to provide services that are priced to attract (and are capable of completing) the customer’s local usage will be presumed to carry a significant amount of local traffic. For purposes of this requirement, any service that enables the customer to complete local calls at prices less than the prevailing prices of the incumbent carrier shall be presumed to qualify;
 - (c) CLEC and/or end user certify that any Special Access arrangement is used for completion of local calls shall be presumed to carry a significant level of local traffic;
 - (d) Special access arrangements used to provide data services shall be presumed to carry a significant amount of local traffic.
- (3) Carriers shall be permitted to multiplex converted Special Access and ineligible Special Access arrangements on the same high capacity facility. Charges for such facilities

³ *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (August 8, 1996)(effective date: September 30, 1996).



should be “ratcheted” to reflect proportional capacity of the UNE and Special Access facilities.